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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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In the Matter of:

Amendments of the Rules to Reform
Interstate Access Charges

USTA Petition for Rulemaking

RM-8356

**COMMENTS OF THE AD HOC
TELECOMMUNICATIONS USERS COMMITTEE**

**AD HOC TELECOMMUNICATIONS
USERS COMMITTEE**

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TABLE OF CONTENTS

	<u>Page</u>
SUMMARY	ii
I. INTRODUCTION	1
II. USTA'S THREE TIERED "MARKET AREA" PROPOSAL WOULD ALLOW EXCESSIVE PRICING FLEXIBILITY	5
III. THE PRINCIPAL OBJECTIVE OF ACCESS REFORM SHOULD BE TO ACHIEVE EFFICIENT PRICING OF ACCESS SERVICES	11
IV. CONCLUSION	12

SUMMARY

As a proponent of competition in the provision of interstate access and local exchange services, the Ad Hoc Committee recognizes that LECs should not be saddled with excessive pricing regulation that would prevent them from participating fully in a competitive marketplace. At the same time, fostering competition in a marketplace served by a dominant provider requires, at least initially, a significant level of regulation to ensure that strategic pricing practices by the dominant provider do not overwhelm relatively modest emerging levels of competition. The Committee believes that the proposals for additional pricing flexibility contained in the USTA Petition on access reform would free LECs from pricing regulation prematurely, thereby disserving the Commission's competitive aims.

The Committee further believes that the principal objective of access reform should be efficient pricing of access services, and that this goal can be achieved only by first addressing inefficiencies and subsidies contained in the Part 36 jurisdictional separations rules. In this regard, the Committee urges the Commission to adopt the sequence for initiating a separations/access reform process, and the specific strategy for improving the efficiency of the access compensation mechanism, described in the Committee's comments filed in response to the Commission's Federal Perspectives On Access Charge Reform. A Staff Working Analysis.

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COMMENTS OF AD HOC TELECOMMUNICATIONS USERS COMMITTEE

The Ad Hoc Telecommunications Users Committee ("Ad Hoc Committee" or "Committee"), pursuant to the Public Notice (Report No. 1975) issued by the Commission on October 1, 1993, submits these comments in response to the Petition for Rulemaking ("Petition") filed September 17, 1993 by The United States Telephone Association ("USTA").

I. INTRODUCTION

The Ad Hoc Committee has been an ardent defender of the Commission's recent initiatives to promote competition in the provision of exchange access and local exchange services^{1/} because it believes that competitive marketplace forces maximize incentives and opportunities for technological innovation and closer-to-cost pricing of communications services. Thus, the Committee is in tune philosophically with the ultimate objective

^{1/} See, Expanded Interconnection with Local Telephone Company Facilities, Report and Order and Notice of Proposed Rulemaking, 7 FCC Rcd 7369 (1992); Expanded Interconnection with Local Telephone Company Facilities, Second Further Notice of Proposed Rulemaking, 7 FCC Rcd 7740 (1992); Expanded Interconnection with Local Telephone Company Facilities, Second Report and Order and Third Notice of Proposed Rulemaking, FCC 93-379, released September 2, 1993, in CC Docket No. 91-141.

which appears to underlie the USTA Petition and the growing collection of related proposals addressing Part 69 access reform;^{2/} i.e., lessening the role of regulators and increasing the role of the marketplace in the provision of telecommunications services.^{3/} Certainly, the interests of the Committee's members would not be well served if the incumbent providers of exchange access and local exchange services were prevented from responding to competition from competitive access providers (CAPs) and others, and the Committee has no reason to wish that LECs be hobbled with needless regulation. Accordingly, the Committee does not oppose considered revisions to the access charge rules designed to allow LECs sufficient pricing flexibility and the ability to offer new and innovative services in response to competition, so long as pricing flexibility is carefully keyed to actual levels of emerging competition.

The Committee also does not dispute the need for changes in access charge and jurisdictional separations

^{2/} See, In the Matter of Petition For Declaratory Ruling And Related Waivers to Establish a New Regulatory Model for the Ameritech Region, DA 93-481, released April 27, 1993; In the Matter of NARUC Petition For Notice of Inquiry Addressing Access Issues, DA 93-847, released August 3, 1993; Federal Perspectives on Access Charge Reform. A Staff Working Analysis, April 30, 1993.

^{3/} Indeed, the Ad Hoc Committee does not take exception to any of the general objectives posited by USTA, which are to: promote universal service, facilitate introduction of new services and technologies, encourage efficient use of the network, support balanced competition in access markets, encourage development of the telecommunications infrastructure, prevent unreasonable discrimination and minimize regulatory burdens. Petition, p. i.

regulations to preserve universal service in the face of emerging competition. The Committee fully endorses preservation of universal service objectives, believing that universal service is a corner stone of the nation's telecommunications infrastructure and economy. Further, the Committee supports the view that new entrants in the telecommunications marketplace must be required to contribute to support mechanisms not only as a matter of equity, but because the support pool would otherwise suffer as users move to competitive providers.^{4/}

Nonetheless, the Ad Hoc Committee has serious concerns with aspects of the USTA proposal, much as it had with certain facets of the proposals for access charge reform noted earlier. In brief, these concerns are that a comprehensive access charge reform undertaking not delay or, worse, become viewed as a prerequisite for, achievement of continued progress in the Commission's efforts to promote competition;^{5/} and, that access

^{4/} While the Committee acknowledges the need to adapt contribution and support mechanisms to an emerging competitive marketplace, it believes that the support mechanism itself needs to be re-evaluated to ensure that support is targeted directly where there is demonstrated need, and not squandered where there is no demonstrated need or used to support inefficient operations. In addition, the Committee believes that re-evaluation of support mechanisms requires consideration of support flows under the Commission's Part 36 Separations procedures. It would be illogical and fruitless to attempt a sensible restructuring of support flows under the access rules without looking first at the support flows which precede derivation of access rates at the jurisdictional separation of costs level.

^{5/} At times, "access reform" appears to be employed as a rallying cry of interests opposed to access competition.
(continued...)

reform measures not prematurely free LECs from pricing regulation before development of effective competition. Thus, the Committee believes that fostering competition in a marketplace served by a dominant provider requires, at least initially, a significant level of regulation to ensure that strategic pricing practices by the dominant provider do not overwhelm relatively modest emerging levels of competition.

The Committee further believes that the primary emphasis of access reform should be to achieve efficient pricing of access services, and that successfully eliminating non-cost based pricing structures under the Part 69 access charge rules will first require review of support flows and subsidies embodied in the current jurisdictional separations rules under Part 36. These views have led the Committee to propose that the Commission continue with its current evolutionary approach to access reform,

5/ (...continued)

For example, in the Expanded Interconnection Proceeding (CC Docket No. 91-141), LECs have argued that comprehensive access reform must accompany implementation of the Commission's expanded interconnection policies. Thus, in their initial comments in response to the Commission's Notice of Proposed Rulemaking and Notice of Inquiry adopted May 9, 1991, initiating CC Docket No. 91-141 (Expanded Interconnection with Local Telephone Company Facilities, 6 FCC Rcd 3259 (1991)), many of the LECs argued that the Commission should consolidate the expanded interconnection proceeding into a comprehensive access proceeding. See, Expanded Interconnection with Local Telephone Company Facilities, 7 FCC Rcd 7369, 7382 (1992). Similarly, USTA's comments urged the Commission to promptly institute "a comprehensive access charge reform proceeding", arguing that the revised access charge structure resulting from the comprehensive access reform proceeding should be adopted at the same time as expanded interconnection for switched transport. Id. at 7383.

adopting revisions to its access rules commensurate with actual achieved levels of competition and demonstrated need by the incumbent providers of exchange access services, and to proceed with jurisdictional separations reform prior to any effort to comprehensively reform access charges.^{5/}

II. USTA'S THREE TIERED "MARKET AREA" PROPOSAL WOULD ALLOW EXCESSIVE PRICING FLEXIBILITY

USTA proposes a three tiered market structure consisting of Initial Market Areas (IMAs), Transitional Market Areas (TMAs), and Competitive Market Areas (CMAs). Based upon these market area classifications, "[v]arying levels of oversight and pricing flexibility would be permitted according to the availability of alternative supply and the apparent willingness of customers to utilize it."^{1/} Initially, all study areas (or, where the Commission has implemented zone density pricing, zones) would be renamed IMAs, the "starting point from which exchange carriers may elect to create new market areas."^{2/} LECs could elect to include wire centers within, and thereby create, a TMA in "the presence of substitutable services from another source."^{2/} The USTA proposal broadly defines such alternative sources to include: "a competitive access provider, cable

^{5/} See, Comments of The Ad Hoc Telecommunications Users Committee, filed September 23, 1993, on Federal Perspectives On Access Charge Reform. A Staff Working Analysis, dated April 30, 1993.

^{1/} Petition, p. 24.

^{2/} Id. at 25.

^{2/} Id.

company, cellular carrier, interexchange carrier, private carrier, or microwave carrier within the geographic area served by the wire center."^{10/} Further, USTA proposes that the presence of expanded interconnection in a wire center would automatically satisfy the TMA criterion, and asserts that "[b]ecause of the cross-elastic nature of access services, all services originating or terminating within these wire centers would be included in the TMA."^{11/} Carriers would be given substantial additional downward pricing flexibility in TMAs^{12/} and, once a TMA had been established, "price cap and non-price cap carriers would be able to respond to a request for proposal from a customer with a contract tailored to meet the customer's needs."^{13/}

USTA proposes that rates for services in a CMA would be completely "outside the access rules", and that "market constraints would fully replace price caps as the control

^{10/} Id.

^{11/} Id.

^{12/} For price cap carriers, individual IMA and TMA categories would have an upper limit of 5 percent for changes in the basket PCI. The lower limit for IMA categories would be 10 percent, while the lower limit for TMA categories would be 15 percent. Non-price cap carriers under optional incentive regulation would be allowed to increase or decrease aggregate prices in a market category by 10 percent in an IMA access category and increase aggregate prices by 10 percent or decrease such prices by 20 percent in a TMA access category on a biennial basis. Petition, pp. 30-31.

^{13/} Petition, p. 32.

mechanism to ensure reasonable rates."^{14/} The behavioral criteria USTA would employ to certify a wire center as a CMA would be:

1. That customers within the serving area of the wire center representing at least 25 percent of the demand for the LEC's interstate access services, or 20 percent of the total market demand for interstate access services within that area, have available to them an alternative source of supply; and,
2. That customers in the serving area of the wire center whose demand represents at least 25 percent of the total demand within that area for the LEC's interstate access services, or a single customer whose demand represents at least 15 percent of that total, actively seek to reduce the cost of their access services through the solicitation of bids, use of private networks, or construction of their own facilities.^{15/}

In the Committee's view, the proposed criteria for establishing TMAs and CMAs would accord LECs excessive pricing flexibility which could stifle the relatively modest emerging levels of exchange access and local exchange competition which exist today. Given that the presence of at least one of the proposed "substitutable services" -- i.e., a CAP, cable company, cellular carrier, IXC, private carrier, or microwave carrier -- can be found in all except the most remote locations, it would seem that the proposed requirements for establishing a TMA would be met automatically in the great majority of study areas. However, while one or more of these potential sources of competition might indeed be present in a study area, and might

^{14/} Id.

^{15/} Id. at 26.

even provide a service to some degree "substitutable" for an aspect of a LEC's operation, none can fairly be said to challenge the dominant position enjoyed by LECs in the exchange access and local exchange markets. CAPs have achieved entry only to niche markets.^{16/} While cable may some day emerge as a competitor in the provision of local exchange or exchange access services, it remains today largely a one-way transmission medium lacking the switching capabilities necessary to compete with the telephone network. Similarly, cellular telephone is not generally viewed as a substitute for local exchange or exchange access services. Yet, based upon the presence of any of these "substitutable" sources within a study area, the USTA proposal would allow all

^{16/} CAPs have introduced competition into the market for high-capacity digital special access services at the DS-1 and higher capacity levels. However, despite the nominal removal of many entry barriers, the actual extent of non-LEC access provider activity is still minuscule when compared with the aggregate size of the national (state plus interstate) switched and special access services market. LEC access revenues for 1991 were \$25.7 billion, almost 75% of which was in the interstate column. See, Statistics of Communications Common Carriers, Federal Communications Commission, 1991/1992 Edition, p. 236. For 1993, CAP access revenues was estimated to total \$209 million, implying a CAP share of the total access market of less than 1 percent. See, Local Telecommunications Competition: 1993 (The "ALT Report"), Connecticut Research, P.O. Box 1379, Glastonbury, CT 06033, Table I-2. At the same time, it appears from network subscribership levels that demand for access services remains highly price-inelastic, indicating the virtual absence of any serious competitive capacity to serve. Moreover, the demand for switched access — which remains a largely monopolistic LEC service — continues to expand. Between 1990 and 1992, for example, interstate switched access MOUs grew by almost 15 billion, or approximately 6.5% annually. See, Long Distance Market Shares, Federal Communications Commission, Industry Analysis Division, June 1993, p. 7.

LEC services originating or terminating within the effected wire centers to be included under TMA pricing flexibility.

The Committee also notes that the TMA criteria would be met in all service areas established under zone density pricing plans by virtue of the availability of expanded interconnection in such areas, and that these are areas in which the Commission has already provided LECs with significant additional pricing flexibility through geographic rate deaveraging. The pricing flexibility afforded by geographic deaveraging should be fully sufficient to allow LECs to respond to existing levels of competition in these areas. It can not be assumed, as USTA would under its TMA criteria, that the mere presence of expanded interconnection opportunities means that LECs are, in fact, experiencing effective competition, especially not at this early stage of the still ongoing expanded interconnection process. Thus, at present, serious questions remain to be resolved concerning the terms of interconnection under the special access expanded interconnection tariffs, and switched transport expanded interconnection tariffs have not even been filed. The Commission has proposed, but not yet directed, expanded interconnection of switched networks. Finally, even assuming that competitive access providers are eventually provided with full expanded interconnection under the terms envisioned by the Commission in the Expanded Interconnection Proceeding, competition will not spring forth fully formed. In short, the TMA criteria fail to

provide a reliable measure of actual, achieved levels of competition.

While the criteria for establishing CMAs would seem to be based on a more quantifiable standard than the TMA criteria, featuring benchmark percentages of interstate access market demand subject to potential alternative sources of supply, the Ad Hoc Committee is concerned that they too would disserve the objective of promoting competition by prematurely freeing LECs from all regulatory pricing constraints. The fact that customers within a serving area representing 25 percent of total demand for a LEC's interstate access services might have available to them "an alternative source of supply" for access services, and may "actively seek to reduce the cost of their access services through the solicitation of bids, use of private networks, or construction of their own facilities", does not necessarily mean the LEC is subject to fully effective competition. Indeed, under this formula, customers representing the great majority (75 percent) of total demand for the LEC's access services do not have alternative sources of supply, leaving the LEC as the clearly dominant provider of interstate access services while its competitors divide among them the remaining 25 percent share. The Commission's objective of promoting competition would not appear to be well served by freeing LECs from all pricing constraints while they retain a par se dominant position in the interstate access marketplace, particularly since the CMA formula considers only competition in interstate access services,

ignoring the fact that LECs are likely to retain their monopolies in the provision of local exchange services for the foreseeable future, providing strong incentives to engage in strategic pricing at the expense of captive monopoly service customers.

III. THE PRINCIPAL OBJECTIVE OF ACCESS REFORM SHOULD BE TO ACHIEVE EFFICIENT PRICING OF ACCESS SERVICES

Among the goals and objectives listed by USTA in its Petition is to "encourage efficient use of the network."^{17/} The Ad Hoc Committee fully endorses this objective and believes that it should be the principal focus of any access reform undertaking. Correcting non-cost based recovery mechanisms embodied in the jurisdictional separations and access charge rules will serve the interests of promoting effective competition and, at the same time, will facilitate the process of adapting contribution and support mechanisms as the marketplace transitions from a regulated to a competitive model. Although an emphasis on pricing flexibility is perhaps understandable from the perspective of USTA, the Committee believes that pricing flexibility should be viewed not as the primary theme of access reform, but as an adjunct to achieving rate re-balancing and efficient pricing of access services.

In its comments in response to the Commission's Access Reform Task Force working paper, the Ad Hoc Committee presented a logical sequence for initiating an access reform process and a specific strategy for improving the efficiency of the access

^{17/} Petition, p. i.

compensation mechanism.^{18/} The Committee incorporates such comments herein by reference, and requests that the Commission consider the Committee's proposals in any access reform proceeding that may be initiated.


IV. CONCLUSION

The Ad Hoc Committee urges the Commission to respond to USTA's Petition for Rulemaking in a manner consistent with the views herein expressed.

Respectfully submitted,

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November 1, 1993

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^{18/} Comments of The Ad Hoc Telecommunications Users Committee filed September 23, 1993, on Federal Perspectives On Access Charge Reform. A Staff Working Analysis, dated April 30, 1993.

CERTIFICATE OF SERVICE

I, Sonia J. Arriola, a secretary in the law firm of Gardner, Carton & Douglas, certify that I have this 1st day of November, 1993, mailed, via first-class mail, postage prepaid, a copy of the foregoing **COMMENTS OF AD HOC TELECOMMUNICATIONS USERS COMMITTEE** to the following:

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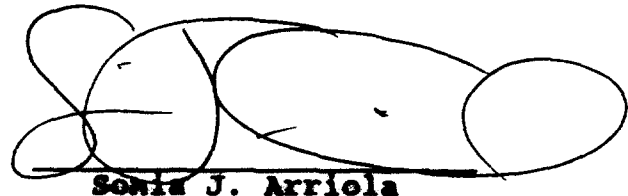
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